



HEAT ACT- SB 651

Questions

I. Assistance Customers – LIHEAP and PIPP

- a) Is the obligation on utilities to not enroll that customer with an alternative supplier if the request comes through?

Sections 16-115E(c) and 19-116(c) provide:

Before the [electric or gas] utility executes a change in a customer's [electric or natural gas] supplier ... the [electric or gas] utility shall confirm at the time of the request whether its records indicate that the customer [either has / has either] received financial assistance from the Low Income Home Energy Assistance Program in the previous 12 months or, at the time of enrollment, is participating in the Percentage of Income Payment Plan; and if so, shall reject such change request.

Accordingly, the utility's duty is to determine from its records whether the customer is on LIHEAP / PIPP, and if so, to reject the change order beginning 1/1/20.

- b) General concerns surrounding alternative suppliers asking potential customers questions that could be seen as discriminatory to determine LIHEAP or PIPP status.

Under Sections 16-115A(d)(1) and 19-115(f)(1), an ARES / AGS is prohibited from "deny[ing] service to a customer ... [f]or establish any differences as to prices, terms, conditions, services, products, facilities, or in any other respect, whereby such denial or differences are based upon ... income, except as provided in Section [16-115E or 19-116, as applicable]." Accordingly, to the extent ARES / AGS in fact have non-discrimination obligations, these are conditioned and qualified by the prohibition against enrolling LIHEAP / PIPP customers.

- c) Is there a way for suppliers to get LIHEAP and PIPP information in advance to avoid marketing to those customers?

The ICC does not have access to this information. The collection of LIHEAP information is overseen by the Department of Commerce and Economic Opportunity (DCEO) as is administration of many aspects of the program. Based on its filed LIHEAP plan, DCEO is required to, and in any case does, maintain applicant / recipient information as confidential. As Staff understands that PIPP customers are in all cases customers found to be LIHEAP-eligible by DCEO, similar confidentiality requirements appear to apply.

- d) What about existing alternative supplier customers who later qualify for LIHEAP and PIPP – how would these customers be handled?

Based on our review, the prohibition against "knowingly submit an enrollment to change a [LIHEAP or PIPP] customer's [supplier]" goes into effect 1/1/20. The enrollments for

existing LIHEAP / PIPP customers will obviously have been submitted prior to that date, and thus not submitted in violation of Section 16-115E(c) or 19-116(c), as applicable. Further, since contracts are void and unenforceable only for enrollments submitted on or after 1/1/20, executory contracts shouldn't be affected. The same analysis might apply in the case of renewals, provided that no new enrollment is required.

II. Automatic Renewals

- a) If a customer has been on a variable rate prior to 1/1/20, can the supplier continue to re-enroll/auto-renew that customer at a variable rate?

This question relates to Sections 2EE and 2DDD of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, and as such is more properly directed to the Attorney General, which, pursuant to Section 3 of the CFA, enforces that Act. However, Sections 2EE(c)(7)(C) and 2DDD(f-5)(3) provide that:

An alternative [retail electric or gas] supplier shall not automatically renew a consumer's enrollment after the current term of the contract expires when the current term of the contract provides that the consumer will be charged a fixed rate and the renewed contract provides that the consumer will be charged a variable rate, unless: (i) the alternative retail electric supplier complies with [applicable notice requirements and required disclosures]; and (ii) the customer expressly consents to the contract renewal in writing or by electronic signature at least 30 days, but no more than 60 days, before the contract expires.

- b) What happens when the customer's consent to renew with the supplier is not obtained? Is it implied the customer would go back to the utility even though there isn't a timeline or procedure identified for that?

There appear to be two possible outcomes. One is that the AGS or ARES continues to serve the customer at the fixed rate prescribed in the original contract; the other is that the customer is returned to default service.

- c) What email contact information should be given for the ICC and AG?

In response to a request for this information, the AG has provided a link to its online consumer complaint form. The ICC provides the link below acknowledging that this is not an email address within the meaning of the Act.

ICC Phone: 800-524-0795

ICC Online Complaint/Inquiry Form: <https://www.icc.illinois.gov/complaints/>

AG Link: <https://ccformsubmission.ilattorneygeneral.net/>

III. Bonding Requirements

- a) Do the increased bond requirements apply to current suppliers?

Yes. Sections 16-115A(b)(2) and 19-115(b)(2) requires ARES and AGS to maintain compliance with certification requirements, of which the bonding requirement is one. The increased amounts are clearly set forth in the statute.

- b) Do suppliers need two separate bonds if they are operating as both an AGS and ARES?

Yes; ARES and AGS certificates are separate.

- c) Do suppliers need a separate bond for door-to-door marketing?

Yes, Sections 16-115(d)(10) and 19-110(e)(6) call for AGS / ARES intending to conduct in-person solicitations directed at residential customers to execute "an additional \$500,000 bond[,]" with "additional" being the operative word.

- d) When are the new bond requirements due?

The new bond requirements are due 1/1/20, when the statute takes effect.

IV. Marketing Materials and Advertising

- a) How is "marketing materials" defined?

The term "marketing materials" is not defined by statute or in any rule. While the Commission has spoken to the issue of when disclosures were required, see Second Notice Order in Docket No. 15-0512, this Order predated the enactment of PA 101-590 and may not be reliable guidance regarding legislative intent.

- b) What is goodwill or institutional advertising?

Section 9-225(d) of the PUA defines "[g]oodwill or institutional advertising" as "advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry."

V. Price to Compare

- a) How and where will the Price to Compare (or "utility price") be defined?

The Price to Compare will be defined in the Part 412 and 512 rules.

- b) Will it be expanded from the pricing page?

There are no plans to do so at this time.

- c) What are the effective dates for the electric Price to Compare? For example, the ICC currently lists “October 2019” not “10/1/2019”.

ORMD will update the Plug In Illinois website to clarify the effective dates for the electric PTC.

- d) How do suppliers go about updating items that need to include the Price to Compare, and within what time range?

This is a business decision that suppliers will have to make, but ARES/AGS are required to comply with all sections of the HEAT Act by 1/1/20.

- e) What happens if the first of the month falls on the weekend and the Price to Compare has not yet been updated?

The electric Price to Compare will be updated on the Plug In Illinois website prior to the first of the month.

VI. Providing Rates

- a) What rate information needs to be provided publicly?

*Sections 16-115A(a)(iv) and Section 19-115(b)(7) requires an ARES or AGS to “make publicly available on its website, without the need for a customer login, rate information for **all** of its variable, time-of-use, and fixed rate contracts currently available to residential customers, including, but not limited to, fixed monthly charges, early termination fees, and [kilowatt-hour or per-therm] charges.”*

ARES/AGS are required to make available, on its website, rate information for all its contracts currently available to residential customers regardless of marketing channel used to enroll customers.

- b) Do we need to provide rate display for both new enrollments and existing customers' rates?

Each ARES or AGS has to disclose “all of its variable, time-of-use, and fixed rate contracts currently available to residential customers[.]”

- c) What is the format for the requirement to submit rates for the prior year?

For the AGSs submitting their rate information to the ICC due annually on January 1, we ask that you file with the ICC [Clerk's Office](#) using the rate template that is located on the [AGS webpage](#). Please name the Excel document in the following format:

“CompanyName_YearDue_RateReport”

Do not make any changes to cells A1-F1 or A2-F2.

For the ARESs submitting their rate information to the ICC due annually on May 31, we ask that you file with the ICC [Clerk's Office](#) using the rate template that is located on the [ARES webpage](#). Please name the Excel document in the following format:

"CompanyName_YearDue_RateReport"

Do not make any changes to cells A1-F1 or A2-F2.

VII. Training Materials

Section 16-115A(e)(vi) provides that: "[e]ach [ARES] shall conduct training for individual representatives engaged in in-person solicitation and telemarketing to residential customers on behalf of that alternative retail electric supplier prior to conducting any such solicitations on the alternative retail electric supplier's behalf. Each [ARES] shall submit a copy of its training material to the Commission on an annual basis and the Commission shall have the right to review and require updates to the material. After initial training, each [ARES] shall be required to conduct refresher training for its individual representatives every 6 months."

- a) According to the ICC, what qualifies as refresher training materials to know what should be provided in the six-month intervals?

All materials used when provided refresher trainings to the individual agents. Including, but not limited to, materials used in both printed and digital formats.

- b) What are the required initial training materials?

All materials used when training the individual agents. Including, but not limited to, materials used in both printed and digital formats.

- c) What should be included in the filing?

All materials used when training the individual agents. Including, but not limited to, materials used in both printed and digital formats. When filing the documents with the ICC Clerk's Office, please include a verified cover letter with a detailed description of the items being filed and the designated code part (220 ILCS 5/16-115A(e)(vi)).

- d) How should the materials be filed?

Currently, ARES should file paper copies of their training materials with the ICC Clerk's Office. As noted above, be sure to include a verified cover letter with a detailed description of the items being filed and the designated code part.

VIII. Other

- a) What is the recommended or preferred delivery type regarding the obligation to deliver notices? Is there a method that would not qualify as having delivered a notice?

Notices should be mailed unless the customer has explicitly agreed to another form of communication.

- b) What guidance can the ICC provide regarding materials that need to be updated in order to be in compliance?

Staff recommends reviewing the list of "Reporting Requirements" listed on the ICC's website for both ARES and AGS along with any additional reporting requirements listed in the HEAT Act.

- c) What are the expectations regarding guaranteed savings plans?

- i. What is the required process for guaranteed savings plans?

An ARES or AGS that elects to seek approval of such a program must, under the statute, "apply to the Commission to offer a savings guarantee plan[.]" 220 ILCS 5/16-115E(b); 19-116(b). In the event an ARES or AGS submits such an application, the Commission "shall initiate a public, docketed proceeding to consider whether or not to approve [the ARES or AGS's] application to offer a savings guarantee plan." This being the case, ICC contested case rules and procedures set out in 83 Ill. Adm. Code Part 200 govern: docketing, assignment to an ALJ, notice, intervention, discovery if needed, testimony, evidentiary hearing, briefing, proposed Order, exceptions, Commission Order.

- ii. What standards will the ICC potentially have?

The only guidance in the statute is that "the savings guarantee plan shall charge customers for ... [natural gas or electric] supply at an amount that is less than the amount charged by the [gas or electric] utility." 220 ILCS 5/16-115E(b); 19-116(b).